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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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11 UNITED STATES DISTRICT COURT
12 FOR THE
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION

CV 13-05553
PSG

15 J & J SPORTS PRODUCTIONS, INC.,

Case No. 5

16 Plaintiff,

COMPLAINT

17 vs.

18 JAVIER SALAS and APOLIN CASTRO,
19 individually and d/b/a TAQUERIA EL
20 CAMINITO,

21 Defendants.

22 PLAINTIFF ALLEGES:

23 JURISDICTION

24 1. Jurisdiction is founded on the existence of a question arising under particular statutes. This
25 action is brought pursuant to several federal statutes, including the Communications Act of 1934,
26 as amended, Title 47 U.S.C. 605, *et seq.*, and The Cable & Television Consumer Protection and
27 Competition Act of 1992, as amended, Title 47 U.S. Section 553, *et seq.*, and California B&P
28 Section 17200, a California state statute.

1 2. This Court has jurisdiction of the subject matter of this action pursuant to 28 U.S.C.
2 Section 1331, which states that the District Courts shall original jurisdiction of all civil actions
3 arising under the Constitution, laws, or treaties, of the United States. This Court has subject matter
4 jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367 (supplemental jurisdiction).

5 3. This Court has personal jurisdiction over the parties in this action as a result of the
6 Defendants' wrongful acts hereinafter complained of which violated the Plaintiff's rights as the
7 exclusive commercial domestic distributor of the televised fight *Program* hereinafter set forth at
8 length. The Defendants' wrongful acts consisted of the interception, reception, publication,
9 divulgence, display, exhibition, and tortious conversion of said property of Plaintiff within the
10 control of the Plaintiff in the State of California constituting an unfair business practice in violation
11 of the law, including specific California state statutes, more particularly set forth below.

12 VENUE

13 4. Pursuant to Title 47 U.S.C. Section 605, venue is proper in the Northern District of
14 California, because a substantial part of the events or omissions giving rise to the claim occurred in
15 this District and/or because, *inter alia*, all Defendants' reside within the State of California (28
16 U.S. C. § 1391 (b) and 28 U.S.C. § 84(c)(2)).

17 INTRADISTRICT ASSIGNMENT

18 5. Assignment to the San Jose Division of the Northern District of California is proper
19 because a substantial part of the events or omissions giving rise to the claim occurred in Santa
20 Clara County and/or the United States District Court for the Northern District of California has
21 decided that suits of this nature, and each of them, are to be heard by the Courts in this
22 particular Division.

23 THE PARTIES

24 6. Plaintiff, J & J Sports Productions, Inc. is, and at all relevant times mentioned was, a
25 California corporation with its principal place of business located at 2380 South Bascom Avenue,
26 Suite 200, Campbell, California 95008.
27
28

1 7. Defendant Javier Salas is an owner, and/or operator, and/or licensee, and/or permittee,
2 and/or person in charge, and/or an individual with dominion, control, oversight and management
3 of the commercial establishment doing business as Taqueria El Caminito operating at 782 North
4 13th Street, San Jose, California 95112.

5 8. Defendant Apolin Castro is an owner, and/or operator, and/or licensee, and/or permittee,
6 and/or person in charge, and/or an individual with dominion, control, oversight and management
7 of the commercial establishment doing business as Taqueria El Caminito operating at 782 North
8 13th Street, San Jose, California 95112.

9
10 9. Defendant Javier Salas is also one of two individuals (the other being Defendant
11 Apolin Castro) specifically identified on the Department of Environmental Health issued by the
12 City of Santa Clara.

13 10. Defendant Apolin Castro, is also one of two individuals (the other being Defendant Javier
14 Salas) specifically identified on the Department of Environmental Health issued by the City of
15 Santa Clara.

16
17 11. Plaintiff is informed and believes, and alleges thereon that on December 8, 2012 (the night
18 of the *Program* at issue herein, as more specifically defined in paragraph 18), Defendant Javier
19 Salas had the right and ability to supervise the activities of Taqueria El Caminito, which included
20 the unlawful interception of Plaintiff's *Program*.

21 12. Plaintiff is informed and believes, and alleges thereon that on December 8, 2012 (the night
22 of the *Program* at issue herein, as more specifically defined in paragraph 18), Defendant Apolin
23 Castro had the right and ability to supervise the activities of Taqueria El Caminito, which included
24 the unlawful interception of Plaintiff's *Program*.

25 13. Plaintiff is informed and believes, and alleges thereon that on December 8, 2012 (the night
26 of the *Program* at issue herein, as more specifically defined in paragraph 18), Defendant Javier
27 Salas, as an individual specifically identified on the Department of Environmental Health for
28 Taqueria El Caminito, had the obligation to supervise the activities of Taqueria El Caminito, which

1 included the unlawful interception of Plaintiff's *Program*, and, among other responsibilities, had
2 the obligation to ensure that the business license was not used in violation of law.

3 14. Plaintiff is informed and believes, and alleges thereon that on December 8, 2012 (the night
4 of the *Program* at issue herein, as more specifically defined in paragraph 18), Defendant Apolin
5 Castro, as an individual specifically identified on the business license for Taqueria El Caminito,
6 had the obligation to supervise the activities of Taqueria El Caminito, which included the unlawful
7 interception of Plaintiff's *Program*, and, among other responsibilities, had the obligation to ensure
8 that the business license was not used in violation of law.

9 15. Plaintiff is informed and believes, and alleges thereon that on December 8, 2012 (the night
10 of the *Program* at issue herein, as more specifically defined in paragraph 18), Defendants Javier
11 Salas and Apolin Castro, specifically directed the employees of Taqueria El Caminito to
12 unlawfully intercept and broadcast Plaintiff's *Program* at Taqueria El Caminito or that the actions
13 of the employees of Taqueria El Caminito are directly imputable to Defendants Javier Salas and
14 Apolin Castro by virtue of their acknowledged responsibility for the actions of Taqueria El
15 Caminito.

16 16. Plaintiff is informed and believes, and alleges thereon that the unlawful broadcast of
17 Plaintiff's *Program*, as supervised and/or authorized by Defendants Javier Salas and Apolin
18 Castro, resulted in increased profits for Taqueria El Caminito.

19
20 **COUNT I**

21 **(Violation of Title 47 U.S.C. Section 605)**

22 17. Plaintiff J & J Sports Productions, Inc., hereby incorporates by reference all of the
23 allegations contained in paragraphs 1-16, inclusive, as though set forth herein at length.

24
25 18. Pursuant to contract, Plaintiff J & J Sports Productions, Inc., was granted the exclusive
26 nationwide commercial distribution (closed-circuit) rights to *Manny Pacquiao v. Juan Manuel*
27 *Marquez, IV Welterweight Fight Program*, telecast nationwide on Saturday, December 8, 2012
28 (this included all under-card bouts and fight commentary encompassed in the television broadcast
of the event, hereinafter referred to as the "*Program*").

1 19. Pursuant to contract, Plaintiff J & J Sports Productions, Inc., entered into subsequent
2 sublicensing agreements with various commercial entities throughout North America, including
3 entities within the State of California, by which it granted these entities limited sublicensing rights,
4 specifically the rights to publicly exhibit the *Program* within their respective commercial
5 establishments in the hospitality industry (i.e., hotels, racetracks, casinos, bars, taverns, restaurants,
6 social clubs, etc.).

7 20. As a commercial distributor and licensor of sporting events, including the *Program*,
8 Plaintiff J & J Sports Productions, Inc., expended substantial monies marketing, advertising,
9 promoting, administering, and transmitting the *Program* to its customers, the aforementioned
10 commercial entities.

11 21. With full knowledge that the *Program* was not to be intercepted, received, published,
12 divulged, displayed, and/or exhibited by commercial entities unauthorized to do so, each and every
13 one of the above named Defendants, either through direct action or through actions of employees
14 or agents directly imputable to Defendants (as outlined in paragraphs 7-16 above), did unlawfully
15 intercept, receive, publish, divulge, display, and/or exhibit the *Program* at the time of its
16 transmission at their commercial establishment in San Jose, California located at 782 North 13th
17 Street, San Jose, California 95112.

18 22. Said unauthorized interception, reception, publication, exhibition, divulgence, display,
19 and/or exhibition by each of the Defendants was done willfully and for purposes of direct and/or
20 indirect commercial advantage and/or private financial gain.

21 23. Title 47 U.S.C. Section 605, *et seq.*, prohibits the unauthorized publication or use of
22 communications (such as the transmission of the *Program* for which Plaintiff J & J Sports
23 Productions, Inc., had the distribution rights thereto).

24 24. By reason of the aforesaid mentioned conduct, the aforementioned Defendants, and each of
25 them, violated Title 47 U.S.C. Section 605, *et seq.*

26 ///

1 25. By reason of the Defendants' violation of Title 47 U.S.C. Section 605, *et seq.*, Plaintiff
2 J & J Sports Productions, Inc., has the private right of action pursuant to Title 47 U.S.C. Section
3 605.

4 26. As the result of the aforementioned Defendants' violation of Title 47 U.S.C. Section 605,
5 and pursuant to said Section 605, Plaintiff J & J Sports Productions, Inc., is entitled to the
6 following from each Defendant:

7 (a) Statutory damages for each willful violation in an amount to
8 \$100,000.00 pursuant to Title 47 U.S.C. 605(e)(3)(C)(ii), and also

9
10 (b) the recovery of full costs, including reasonable attorneys' fees,
11 pursuant to Title 47 U.S.C. Section 605(e)(3)(B)(iii).

12
13 **WHEREFORE, Plaintiff prays for judgment as set forth below.**

14 **COUNT II**

15 **(Violation of Title 47 U.S.C. Section 553)**

16
17 27. Plaintiff's hereby incorporates by reference all of the allegations contained in paragraphs 1-
18 26, inclusive, as though set forth herein at length.

19 28. The unauthorized interceptions, reception, publication, divulgence, display, and/or
20 exhibition of the *Program* by the above named Defendants was prohibited by Title 47 U.S.C.
21 Section 553, *et seq.*

22
23 29. By reason of the aforesaid mentioned conduct, the aforementioned Defendants, and each of
24 them, violated Title 47 U.S.C. Section 553, *et seq.*

25 30. By reason of the Defendants' violation of Title 47 U.S.C. Section 553, *et seq.*, Plaintiff
26 J & J Sports Productions, Inc., has the private right of action pursuant to Title 47 U.S.C. Section
27 553.
28

31. As the result of the aforementioned Defendants' violation of Title 47 U.S.C. Section 553, Plaintiff J & J Sports Productions, Inc., is entitled to the following from each Defendant:

- (a) Statutory damages for each violation in an amount to \$10,000.00 pursuant to Title 47 U.S.C. § 553(c)(3)(A)(ii); and also
- (b) Statutory damages for each willful violation in an amount to \$50,000.00 pursuant to Title 47 U.S.C. § 553(c)(3)(B); and also
- (c) the recovery of full costs pursuant to Title 47 U.S.C. Section 553 (c)(2)(C); and also
- (d) and in the discretion of this Honorable Court, reasonable attorneys' fees, pursuant to Title 47 U.S.C. Section 553 (c)(2)(C).

WHEREFORE, Plaintiff prays for judgment as set forth below.

COUNT III

(Conversion)

32. Plaintiff's hereby incorporates by reference all of the allegations contained in paragraphs 1-31, inclusive, as though set forth herein at length.

33. By their aforesaid acts of interception, reception, publication, divulgence, display, and/or exhibition of the *Program* at their commercial establishment at the above-captioned address, the aforementioned Defendants, and each of them, tortuously obtained possession of the *Program* and wrongfully converted same for their own use and benefit.

34. The aforesaid acts of the Defendants were willful, malicious, egregious, and intentionally designed to harm Plaintiff J & J Sports Productions, Inc., by depriving Plaintiff of the commercial license fee to which Plaintiff was rightfully entitled to receive from them, and in doing so, the Defendants subjected the Plaintiff to severe economic distress and great financial loss.

1 35. Accordingly, Plaintiff J & J Sports Productions, Inc., is entitled to both compensatory,
2 as well as punitive and exemplary damages, from aforementioned Defendants as the result of the
3 Defendants' egregious conduct, theft, and conversion of the *Program* and deliberate injury to the
4 Plaintiff.

5 **WHEREFORE, Plaintiff prays for judgment as set forth below.**

6 **COUNT IV**

7 **(Violation of California Business and Professions Code Section 17200, *et seq.*)**

8
9 36. Plaintiff hereby incorporates by reference all of the allegations contained in Paragraphs 1-
10 35, inclusive, as set forth herein at length.

11
12 37. By contract, Plaintiff J & J Sports Productions, Inc., was granted exclusive domestic
13 commercial exhibition closed-circuit rights to the *Program*.

14
15 38. Plaintiff did not authorize transmission, interception, reception, divulgence, exhibition, or
16 display of the *Program* to the general public, persons at large, or to the commercial
17 establishment operated by the foregoing Defendants, or any of them.

18 39. With full knowledge that the *Program* was not to be intercepted, received, published,
19 divulged, displayed, and/or exhibited by commercial entities unauthorized to do so, each and every
20 one of the above named Defendants either through direct action or through actions of employees or
21 agents directly imputable to Defendants by virtue of their respective positions and authority did
22 unlawfully intercept, receive, publish, divulge, display, and/or exhibit the *Program* at the real time
23 transmission of the *Program's* broadcast at the commercial establishment, as more particularly
24 indicated and identified above.

25 40. Plaintiff is informed and believes and alleges thereon that the Defendants and/or their
26 agents, servants, workmen, or employees performed the aforementioned acts knowingly, willfully
27 and to confer a direct or indirect commercial advantage and/or pirate financial gain to the
28

1 Defendants, to the detriment and injury of Plaintiff and its business enterprise as a commercial
2 distributor and closed-circuit licensor of sports and entertainment television programming.

3 41. The Defendants' unauthorized interception, publication, divulgence and/or exhibition was
4 done by the Defendants wantonly, recklessly, and without regard whatsoever for the intellectual
5 property rights of the Plaintiff.

6 42. The aforementioned unlawful acts of each of the Defendants constituted, unlawful, untrue,
7 fraudulent, predatory, unfair, and deceptive trade practices, and by reason of the aforementioned
8 conduct, the Defendants, and each of them, violated California and Professions Code Section
9 17200, *et seq.*

10
11 43. As a proximate result of the aforementioned acts attributable to the Defendants, Plaintiff
12 has been permanently deprived of the patronage of current, previous and potential customers of the
13 sports and entertainment programming it licenses commercially to the hospitality industry, all to its
14 severe financial injury and loss in a sum to be determined at trial.

15 44. By reason of the Defendants' violation of California Business and Professions Code Section
16 17200, *et seq.*, Plaintiff J & J Sports Productions, Inc. is entitled to restitution for its injuries, the
17 disgorgement and turn-over of the Defendants' ill-gotten gains, as well as injunctive and
18 declaratory relief, from each of the aforementioned Defendants as may be made more
19 appropriately determined at trial.

20 45. Plaintiff is entitled to its attorneys' fees from the Defendants for enforcing California
21 Business and Professions Code Section 17200 as it meets the standards of a private attorney
22 general as specifically and statutorily defined under California Civil Procedure Section 1021.5.

23
24 **WHEREFORE, Plaintiff prays for judgment as set forth below.**

25 **As to the First Count:**

- 26
27 1. For statutory damages in the amount of \$110,000.00 against the Defendants,
28 and each of them, and

2. For reasonable attorneys' fees as mandated by statute, and
3. For all costs of suit, including but not limited to filing fees, service of process fees, investigative costs, and
4. For such other and further relief as this Honorable Court may deem just and proper;

As to the Second Count:

1. For statutory damages in the amount of \$60,000.00 against the Defendants, and each of them, and;
2. For reasonable attorneys' fees as may be awarded in the Court's discretion pursuant to statute, and;
3. For all costs of suit, including but not limited to filing fees, service of process fees, investigative costs, and;
4. For such other and further relief as this Honorable Court may deem just and proper.

As to the Third Count:

1. For compensatory damages in an amount according to proof against the Defendants, and each of them, and;
2. For exemplary damages against the Defendants, and each of them, and;
3. For punitive damages against the Defendants, and each of them, and;
4. For reasonable attorneys' fees as may be awarded in the Court's discretion pursuant to statute, and;
5. For all costs of suit, including but not limited to filing fees, service of process fee, investigative costs, and;
6. For such other and further relief as this Honorable Court may deem just and proper.

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As to the Fourth Count:

1. For restitution to the Plaintiff in an amount according to and from the Defendants, for their ill-gotten gains, and;
2. For declaratory relief, and;
3. For prohibitory and mandatory injunctive relief, and;
4. For reasonable attorneys' fees as may be awarded in the Court's discretion pursuant to statute, and;
5. For all costs of suit, including but not limited to filing fees, service of process fees, investigative costs, and;
6. For such other and further relief as this Honorable Court may deem just and proper.

Respectfully submitted,

Dated:

11/22/13


LAW OFFICES OF THOMAS P. RILEY, P.C.

By: Thomas P. Riley
Attorneys for Plaintiff
J & J Sports Productions, Inc.